



UNITED STATES PATENT AND TRADEMARK OFFICE

JA
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,720	06/26/2003	Mark Bemsley	36590.009	6903
21907	7590	01/28/2005	EXAMINER	
ROZSA & CHEN 15910 VENTURA BOULEVARD SUITE 1601 ENCINO, CA 91436			PHILLIPS, CHARLES E	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,720

Applicant(s)

BERNSLEY, MARK

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 17-21, 28 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss in view of Brooke, Jr. as set forth in the previous action.

The arguments on pages 14-16 are not convincing. The attempt to place a distinction between "the thin paper liner" as applicant argues in line 12, of page 15, and the instant device is not convincing as no material distinction is being claimed here and the rejection is based on providing the Weiss device which teaches the same material make up with a securing device as taught by Brooke. Weiss being of the same material makeup would be expected to react in the same manner as the instant device. The intent of all the devices here is the same with respect to maintaining registry of the respective opening of the overlay and the toilet seat.

Claims 1-14, 16 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art and for the reasons advanced in the previous action.

The argument that the Crossley combination is flawed because it is constructed of different material than Weiss is not well taken. The burden of this office is to make a prima facie case that the use of handles on Weiss would have been obvious to the ordinary artisan. This has been done in that Weiss and Crossley et al, teaching the same art device, the ordinary artisan would find it obvious to provide the former with perfecting features demonstrated by the latter. The matter of engineering handles in

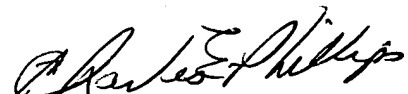
Weiss would be expected to reside within the level of ordinary skill of the artisan. The fact that the front sides of Weiss fold downwardly would not preclude handles "extending upwardly along one lengthwise edge of the barrier" as recited by the instant claims for instance towards the rear of the device beyond elements 22A and B.

Claims 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art and for the reasons advanced in the previous action.

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number (571) 272-4893.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Charles E. Phillips
Primary Examiner